

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA**

CSX TRANSPORTATION, INC.)	
)	
PLAINTIFF,)	
)	
V.)	
)	CASE No. 1:21-cv-2859-JMS-MJD
ZAYO GROUP, LLC,)	
)	
DEFENDANT AND)	
THIRD-PARTY PLAINTIFF,)	
)	
V.)	
)	
MILENIUM INC., CROSSROADS)	
COMMUNICATIONS SOLUTIONS, LLC,)	
BASELINE COMMUNICATIONS, NXC,)	
LLC, BSM GROUPS, LLC, JDH)	
CONTRACTING, INC, OCM ENGINEERING,)	
LLC, ON POINT CONSTRUCTION)	
MANAGEMENT, INC., PLB ENGINEERING,)	
LLC, SPECTRUM ENGINEERING, LLC, AND)	
TESCO COMPANY, INC.,)	
)	
THIRD-PARTY DEFENDANTS.)	
)	

JOINT MOTION TO CONTINUE ONE SET OF EXPERT DEADLINES

For the reasons discussed during the September 22, 2023 status conference, CSXT and Zayo (together, the “Parties”) hereby jointly move to continue the deadline for CSXT’s damage expert report. In support of their motion, the Parties respectfully show the Court:

1. The parties were unable to schedule Mr. Noto’s deposition in the month of October. Because Mr. Noto’s testimony will likely be utilized within CSXT’s damage expert report, CSXT requires an extension of the damage expert report to a date after Mr. Noto’s deposition.

2. The current deadline for CSXT's damage expert report is October 4, 2023. Doc. 258. Zayo's deadline to serve their rebuttal report to CSXT's damage expert report is currently November 4, 2023. *Id.*

3. The Parties have agreed that, if the Court either denies or has not yet ruled on Zayo's Fed. R. Civ. P. 72(a) appeal of the denial of its Motion for Protective Order related to Mr. Noto's deposition, Mr. Noto's deposition will occur on November 13, 2023, beginning 11:00am MST, in Denver, Colorado. If the Parties anticipate the need for the deposition to go past 5:30 pm MST, they will confer as to an earlier start time for the deposition.

4. CSXT proposes to serve its damage expert report on November 17, 2023.

5. Zayo proposes to serve its rebuttal report to CSXT's damage expert report on December 18, 2023.

6. Zayo agrees to make the expert(s) authoring the rebuttal report to CSXT's damage expert report available for deposition on a mutually-agreeable date on December 20 or 21, 2023; December 28 or 29, 2023; January 4 or 5, 2024; or during the week of January 8, 2024 at a location near a major airport on the East Coast, Chicago, Illinois, Denver, Colorado, or in Indianapolis, Indiana.

7. The Parties do not seek to move the January 12, 2024 discovery deadline (Doc. 258) or any other deadline.

8. For clarity, except for CSXT's damage expert and the rebuttal expert report thereto, the Parties do not propose to change the deadlines listed in § III.F of Doc. 258.

9. The Parties therefore respectfully move this Court to:

- a. Amend the Case Management Plan to authorize CSXT to serve its damage expert report to and including November 17, 2023.

- b. Amend the Case Management Plan to authorize any Defendant or Third Party Defendant to serve its rebuttal report to the CSXT damage expert report to and including December 18, 2023.

Dated: September 25, 2023

/s/ Matthew T. Ciulla

Robert D. MacGill (9989-49)

Matthew T. Ciulla (34542-71)

MACGILL PC

156 E. Market St.

Suite 1200

Indianapolis, IN 46204

Telephone: 317-721-1253

Robert.MacGill@MacGillLaw.com

Matthew.Ciulla@MacGillLaw.com

Attorneys for Plaintiff

/s/ Tess Hand-Bender

Pfenne Peter Cantrell

April M. Jay

KIGHTLINGER & GRAY, LLP

211 North Pennsylvania Street

One Indiana Square, Suite 300

Indianapolis, IN 46204

(317) 638-4521

Pcantrell@k-Glaw.Com

Tess Hand-Bender

Charles Casteel

PRO HAC VICE

Davis Graham & Stubbs LLP

1550 17th Street Ste 500

Denver, CO 80202

USA

303-892-7419

Email:tess.hand-bender@dgsllaw.com

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on September 25, 2023 on all counsel of record by virtue of the Court's CM/ECF System.

/s/Matthew T. Ciulla